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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 ALYSSA FETTERS, an individual, and on
15 behalf of all others similarly situated;

16 Plaintiff,

17 vs.

18 SULPHUR SPRINGS UNION SCHOOL
19 DISTRICT, a public entity; and DOES 1 to 10,
20 inclusive,

21 Defendants.

CASE NO. _____

**COMPLAINT FOR VIOLATION OF
THE FAIR LABOR STANDARDS ACT**

[29 USC § 207, et seq.]

**COLLECTIVE ACTION PURSUANT
TO 29 USC § 216(b)**

DEMAND FOR A JURY TRIAL

1 **INTRODUCTION**

2 1. This action is brought pursuant to the provisions of the Fair Labor Standards Act
3 of 1938, 29 U.S.C. 201, *et seq.* (hereinafter, “the FLSA”), on behalf of herself and all others
4 similarly situated, to recover from Defendant SULPHUR SPRINGS UNION SCHOOL
5 DISTRICT (hereinafter, “SSUSD”) and DOES 1 to 10, inclusive, (collectively “Defendants”),
6 unpaid overtime compensation, interest thereon, liquidated damages, costs of suit and reasonable
7 attorneys’ fees.

8
9 **JURISDICTION AND VENUE**

10 2. This action arises under the FLSA, 29 U.S.C. § 201 *et seq.* The Court has original
11 jurisdiction to hear this Complaint and to adjudicate the claims stated herein pursuant to 28
12 U.S.C. § 1331 *et seq.*

13 3. Venue is proper in the United States District Court, Central District of California,
14 pursuant to 28 U.S.C. § 1391, because Defendant SSUSD resides in this District and because the
15 events giving rise to the claims occurred in this District.

16
17 **PARTIES**

18 4. Plaintiff ALYSSA FETTERS (hereinafter “Plaintiff” or “Fetters”), is and was, at
19 all times mentioned herein, a resident of the County of Los Angeles, in the State of California.
20 Plaintiff was employed by Defendant SSUSD, as a misclassified employee. Defendants
21 misclassified Plaintiff as an exempt employee – however, Plaintiff should have properly been
22 classified as an hourly non-exempt employee.

23 5. Defendant, SSUSD, is a political subdivision of the State of California and at all
24 times hereinafter-mentioned, employed Plaintiff.

25 6. Plaintiff brings this action on behalf of herself and all other persons similarly
26 situated who currently work or have worked for SSUSD in the last three (3) years and were
27 misclassified and not paid all overtime compensation due (hereinafter, “FLSA Collective.”)
28 Those individuals similarly situated constitute a well-defined community of interest in the

1 questions of law and fact. The claims of the represented party are typical of the claims of those
2 similarly situated. The represented party will fairly and adequately reflect and represent the
3 interest of those similarly situated.

4 7. Plaintiff does not know the true names or capacities, whether individual, partner
5 or corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason,
6 said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this
7 complaint when the true names and capacities are known. Plaintiff is informed and believes and
8 based thereon alleges that each of said fictitious Defendants was responsible in some way for the
9 matters alleged herein and proximately caused Plaintiff and all others similarly situated to be
10 subject to the illegal employment practices, wrongs, and injuries complained of herein.

11
12 **FACTUAL ALLEGATIONS**

13 8. Plaintiff worked for SSUSD as a registered occupational therapist (“OTR”) from
14 approximately May 2019 to approximately August 2021. Defendants misclassified Plaintiff and,
15 on information and belief, all others similarly situated, as exempt employees, paid them salaries,
16 and expected them to regularly work in excess of forty hours a week, in violation of the
17 California Education Code (“Ed. Code”) and the FLSA.

18 9. During the initial hire process, Plaintiff was told her employment was for a set
19 number of days and would not include working days past the school year, known as Extended
20 School Year (“ESY”). Defendants did not provide Plaintiff with a calendar showing her
21 assigned work days until well after she began working for SSUSD, as required by Ed. Code §
22 45169. At this point, Plaintiff discovered that she was scheduled to work more days than
23 previously represented, and that these days included ESY.

24 10. Plaintiff’s duties, and on information and belief, the job duties of all other
25 similarly situated employees, were varied and involved participating in Individual Education
26 Program (“IEP”) meetings, conducting individual student assessments, and providing embedded
27 services and general support to educational staff. The completion of Plaintiff’s and, on
28

1 information and belief, all other similarly situated employees' primary job duties did not involve
2 the exercise of specialized knowledge or independent judgment and discretion.

3 11. On information and belief, to qualify for the OTR position, SSUSD required (1) a
4 Bachelor's degree, (2) certification with the National Board for Certification in Occupational
5 Therapy ("NBCOT") and (3) licensure in the state of California.

6 12. To become licensed, OTR candidates must graduate from an OTR program
7 accredited by the Accreditation Council for Occupational Therapy Education ("ACOTE").
8 ACOTE accreditation requires that programs ensure that their graduates, "Be educated as a
9 generalist with a broad exposure to the delivery models and systems used in settings where
10 occupational therapy is currently practiced and where it is emerging as a service." Moreover,
11 ACOTE standards require that the curriculum "include preparation for practice as a generalist
12 with a broad exposure to practice settings (e.g., school, hospital, community, long-term care) and
13 practice areas, including new and emerging areas (as defined by the program). The curriculum
14 must prepare students to work with a variety of populations including, but not limited to, infants,
15 children, adolescents, adults, and older adults in areas of physical and mental health."

16 13. On information and belief, Plaintiff and all other similarly situated employees
17 graduated from their respective OTR programs as "generalists." Plaintiff's OTR program
18 coursework and, on information and belief, all other similarly situated employees' coursework,
19 entailed a general overview of how to apply occupational therapy concepts to different age
20 groups, populations, and needs (physical, mental health, etc.). Plaintiff does not use more than
21 5% of her graduate degree coursework in her day-to-day job. Rather, Plaintiff and, on
22 information and belief, all other similarly situated employees had to learn 95% of their job
23 through on-the-job training and mentorship from senior OTRs, continuing education, and trial
24 and error in the field.

25 14. Plaintiff's primary duty involved providing therapeutic embedded services and
26 assessment for students. These embedded services generally involve individual or small group
27 therapeutic play with students to build motor and sensory skills. Plaintiff's and, on information
28 and belief, all other similarly situated employees' provision of therapeutic embedded services

1 required knowledge acquired from on-the-job training and mentorship, continuing education, and
2 trial and error in the field, rather than from “a prolonged course of specialized intellectual
3 instruction.”

4 15. Throughout the course of her employment with SSUSD, Plaintiff and, on
5 information and belief, all others similarly situated did not participate in any personnel decisions
6 including, but not limited to, hiring, discipline, or training. Plaintiff and, on information and
7 belief, all others similarly situated did not supervise two or more full-time employees. Nor did
8 Plaintiff and, on information and belief, all others similarly situated assist in any work related to
9 the general business operations of SSUSD including, but not limited to, accounting, marketing,
10 information technology maintenance, or internal compliance.

11 16. On information and belief, as early as two months into her employment at
12 SSUSD, Plaintiff expressed concerns regarding her excessive workload. Plaintiff was able to
13 demonstrate the workload she was assigned was equivalent to 1.5-2 full time positions, and that
14 as a result, Plaintiff was forced to work continuous overtime. On information and belief,
15 although Plaintiff continuously raised these concerns to her supervisors at SSUSD, including
16 Assistant Superintendent Joshua Randall (“Randall”), Defendants did not address the workload
17 concerns of Plaintiff and, on information and belief, all others similarly situated.

18 17. Specifically, it was routine for Plaintiff and, on information and belief, all others
19 similarly situated, to work fifteen to twenty hours of overtime a week, including on weekends
20 and over holiday breaks, in violation of Ed. Code §§ 45127, 45131. Plaintiff was also required
21 to work while on medical leave. Plaintiff and, on information and belief, all others similarly
22 situated, averaged approximately fifty-five to sixty-five hours per week for “normal” work
23 weeks. Plaintiff and, on information and belief, all others similarly situated, never received any
24 overtime pay in violation of the Ed. Code §§ 45127, 45128 and the FLSA.

25 18. On information and belief, on or about May 20, 2021, Plaintiff emailed Merry
26 Martinez-Gonzalez, a Human Resource Specialist at SSUSD, with questions regarding her
27 compensation and scheduled workdays.

1 19. The next day, on or about May 21, 2021, Plaintiff had a conversation with Joshua
2 Randall and Director of Fiscal Services, Cristina Fiock (“Fiock”). During this conversation,
3 Plaintiff was informed that as an OTR, she was an “exempt management position,” that she was
4 not eligible for any benefits per Education Code because she was not represented by a union, and
5 that only 12-month classified employees (work 146 days) received vacation or holiday pay,
6 which an OTR was not. Despite repeated requests from Plaintiff, no documentation was made
7 available to support this information.

8 20. On information and belief, a few days later on or about June 1, 2021, Randall and
9 Fiock told Plaintiff that she had, in fact, been paid for holidays, vacations, and a total of 260 days
10 and was now considered to be a 12-month employee. These statements directly contradicted the
11 previous comments made during the May 21, 2021 phone conversation. On information and
12 belief, Randall said that based on his interpretation of these findings, the district miscalculated
13 Plaintiff’s “extra duty” contracts and that Plaintiff actually *owed* the district money.

14 21. On information and belief, Randall’s assertion that Plaintiff owed the district
15 money was a thinly veiled attempt to intimidate Plaintiff and dissuade additional inquiries or
16 complaints regarding Plaintiff’s workload or overtime, compensation, and/or scheduled
17 workdays.

18 22. On information and belief, Defendants willfully violated the FLSA for all the
19 reasons set out under paragraphs 13-21.

20
21 **FLSA COLLECTIVE ACTION ALLEGATIONS**

22 23. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully
23 set forth herein.

24 24. This action is brought by Plaintiff as a collective action, on her own behalf and on
25 behalf of all others similarly situated, under the provisions of 29 U.S.C. § 216, for damages,
26 liquidated damages, three-year statute of limitations and relief incident and subordinate thereto
27 including costs and attorneys’ fees.

1 25. The proposed FLSA Collective Class (hereinafter, “FLSA Collective”) so
2 represented by Plaintiff in this action, and of which Plaintiff is herself a member, consists of the
3 following:

4 All current and former registered occupational therapists (“OTRs”) who worked for
5 Defendant SSUSD from (3) years prior to the filing of this Complaint to the present, whom
6 Defendants failed to fully compensate in the statutorily required amounts for all hours of
overtime worked, as a result of Defendants’ unlawful and willful misclassification of OTRs
as exempt employees. (hereinafter, “Collective Action Members”)

7
8 26. Plaintiff and the proposed FLSA Collective are victims of Defendants’
9 widespread, repeated, and illegal policies that resulted in violations of their rights under the
10 FLSA.

11 27. During the applicable statutory period, Plaintiff and the other similarly situated
12 OTRs routinely worked in excess of 40 hours in a workweek without receiving proper overtime
13 compensation.

14 28. Defendants willfully engaged in a pattern of violating the FLSA, as described in
15 this Complaint, in ways including, but not limited to, denying employees compensation for hours
16 worked, including overtime hours.

17 29. Plaintiff is similarly situated to the Collective Action Members because they were
18 paid in the same manner and performed the same primary job duties.

19 30. During their employment, Collective Action Members were Defendants’
20 “employees” as defined by the FLSA, 29 U.S.C. § 203(e).

21 31. During their employment, Defendants were Collective Action Members’
22 “employer” as defined by the FLSA, 29 U.S.C. § 203(d).

23 32. Of Defendants’ employees who performed the same primary job duties as
24 Plaintiff in the last three years, Defendants classified some or all as exempt from the overtime
25 provisions of the FLSA and paid them a salary.

26 33. Of Defendants’ employees classified as exempt and who performed the same
27 primary duties as Plaintiff in the last three years, some or all worked over 40 hours in one or
28 more individual workweeks.

1 34. The following are some of the questions of law and fact that are common to the
2 Collective Action Members:

- 3 a. Whether Defendants employed Plaintiff and the Collective Action
4 Members within the meaning of the FLSA;
5 b. Whether Defendants improperly classified Plaintiff and the Collective
6 Action Members as exempt from the overtime provisions of the FLSA;
7 c. Whether Plaintiff and the Collective Action Members worked more than
8 40 hours in one or more individual workweeks during the prior three
9 years;
10 d. Whether Defendants failed to pay Plaintiff and the Collective Action
11 Members overtime at one-and-one-half times their regular rates of pay
12 when they worked more than 40 hours per week;
13 e. Whether Defendants' decision to classify Plaintiff and the Collective
14 Action Members as exempt employees was made in good faith; and
15 f. Whether Defendants willfully violated the FLSA by classifying Plaintiff
16 and the Collective Action Members as exempt employees.

17 35. Defendants maintained one or more common job descriptions for registered
18 occupational therapists.

19 36. Defendants have names and addresses for Collective Action Members in their
20 payroll or personnel records.

21 37. Defendants have email addresses for Collective Action Members in their payroll
22 or personnel records.

23 38. Defendants have phone numbers for Collective Action Members in their payroll
24 or personnel records.

25 39. Defendants are aware or should have been aware that the FLSA required them to
26 pay Collective Action Members overtime.

FIRST CAUSE OF ACTION

VIOLATION OF THE FAIR LABOR STANDARDS ACT

FAILURE TO PAY OVERTIME WAGES

(COLLECTIVE ACTION)

40. As a separate and distinct cause of action, Plaintiff, on behalf of herself and the FLSA Collective, complains and realleges all the allegations contained in this Complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action. Plaintiff, and the FLSA Collective, bring this cause of action against Defendants SSUSD and DOES 1 through 10.

41. The FLSA requires covered employers to pay non-exempt employees no less than one-and-one-half times their regular rate of pay for all hours worked in excess of forty (40) in a workweek. 29 U.S.C. § 207.

42. Plaintiff and Collective Action Members were not exempt from the overtime provisions of the FLSA.

43. During the prior three years, Defendants suffered and permitted Plaintiff and Collective Action Members to work over 40 hours in one or more individual workweeks.

44. Defendants paid Plaintiff and Collective Action Members a salary.

45. Defendants did not pay Plaintiff and Collective Action Members one-and-one-half times their regular rates of pay for all time they worked over 40 hours in one or more individual workweeks.

46. Defendants violated the FLSA by failing to pay overtime to Plaintiff and Collective Action Members at one-and-one-half times their regular rates of pay when they worked over 40 hours in one or more individual workweeks.

47. Defendants' violations of the FLSA were willful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment on behalf of herself and the FLSA Collective against Defendants as to her First Cause of Action, as follows:

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF AND DEMAND FOR A JURY TRIAL

- a. An Order designating this lawsuit as a Collective Action under the FLSA and permitting the issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals;
- b. All unpaid overtime wages due to Plaintiff and the Collective Action Members;
- c. For an injunction to prohibit Defendants from engaging in the illegal employment practices complained of herein;
- d. For an award of interest, including prejudgment interest, at the legal rate;
- e. Liquidated damages equal to the unpaid overtime compensation due;
- f. For punitive damages as allowed by law;
- g. For an award of costs and reasonable attorneys' fees pursuant to statute; and
- h. For such other and further relief as the court deems appropriate, just, and proper.

Dated: May 6, 2022

HENNIG KRAMER RUIZ & SINGH, LLP

/s/ Adrian Hernandez
Rob Hennig
Brandon Ruiz
Adrian Hernandez
Attorneys for Plaintiff ALYSSA FETTERS

REQUEST FOR JURY TRIAL

Plaintiff requests trial by jury in this matter.

Dated: May 6, 2022

HENNIG KRAMER RUIZ & SINGH, LLP

/s/ Adrian Hernandez
Rob Hennig
Brandon Ruiz
Adrian Hernandez
Attorneys for Plaintiff ALYSSA FETTERS